

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA

Plaintiff,

v.

CASE NO:

YYYYYYYYYYYYYYYYYY,

Defendant.

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**ORDER AMENDING STANDING ORDER FOR DISCOVERY AND  
INSPECTION IN CRIMINAL CASES;  
AND GIVING NOTICE OF CERTAIN PRETRIAL AND TRIAL PRACTICES**

Pursuant to paragraph 12 of the standing order in criminal cases, Administrative Order No# 99-AO-003, the court determines that certain trial preparation matters will assist in the effective administration of this case. Therefore,

**IT IS HEREBY ORDERED** that Administrative Order No# 99-AO-003 is amended in certain respects for the purposes of this case, and counsel are directed to organize the aspects of trial preparation stated in "Standing Administrative Order 99-AO-003 on Criminal Practice" or in the Amendments thereto attached as Appendix 1 of this Order.

**IT IS FURTHER ORDERED** that counsel shall take notice of the court's intended practices, outlined in "Appendix 2" to this Order, concerning pretrial, voir dire, jury selection, trial practices, final pretrial and guilty plea cutoff, and sentencing.

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ROBERT H. CLELAND  
UNITED STATES DISTRICT JUDGE

Date: July \_\_\_\_\_, 2003

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

APPENDIX 1

**AMENDMENTS TO STANDING ADMINISTRATIVE ORDER 99-AO-003  
ON CRIMINAL PRACTICE**

The references in this Appendix to "section" numbers are to the Sections of 99-AO-003.

1) **Section 1 (MEETING TO REVIEW EVIDENCE):**

It may be the meeting described in this Section will have already taken place before counsel receive this Order, and that no further encouragement by the court is required. In the event that such a meeting has not yet been held, however, these provisions apply. The court strongly recommends that such a meeting should be conducted, and that it occur as soon after arraignment as can be reasonably managed, but the word "shall" is hereby replaced by the phrase "are encouraged to," and the time of the meeting shall be subject to agreement between the attorneys.

The court's practice is to inquire at a preliminary scheduling conference about the state of voluntary government and reciprocal defense discovery, and to set any deadlines which appear at that time to be required for Rule 16 compliance. The government's responsibility with respect to "Brady" materials is not subject to this amendment.

2) **Section 5(a) (MARKING OF EXHIBITS):**

Exhibits shall be designated with the government using numbers beginning with "101" and the defense using numbers beginning with "501." In the event of an extraordinary number of exhibits or in the event of more than one defendant, counsel shall discuss and recommend to the court before trial a reasonable alteration to the numbering system described.

The list required under this Section of the Standing Order should be submitted not later than the morning of jury selection, but the listing submitted may be *ex parte* as to items other than Rule 16, if in the good faith opinion of counsel there is a reasonable basis for doing so, until the item is identified in court.

Counsel for the government is urged to make reasonable efforts to reach agreement with other counsel concerning the admissibility of each intended physical exhibit. In the event such agreement is reached, a list of such exhibits is to be prepared by government counsel for entry at the opening of trial.

3) **Sections 5(b), 6 and 7 (OBJECTIONS TO FOUNDATIONAL ISSUES):**

In the event defense counsel chooses to file a notice of intent to contest foundation, chain-of-custody or scientific analysis, such notice shall be filed not later than **7 days before trial**. Unless such items or possible exhibits are unusually voluminous, the notice shall provide a brief exhibit-by-exhibit or item-by-item description of the good faith basis for any such objection. A boilerplate statement which says nothing more than "defendant contests the foundation" is insufficient. In such an event, any objections to the foundation, chain of custody or scientific analysis in question at trial may be deemed waived, and will not be recognized by the court. The statement of the good faith basis for any objection may be *ex parte* if in the opinion of counsel there is a reasonable basis for doing so.

In the event that such items or possible exhibits are unusually voluminous, counsel for the defense shall, as early as is possible, give notice to the court and the government of the expected difficulty in providing the specific objection otherwise required, and seek the assistance first of the government, then of the court, in resolving the matter.

4) **Section 10 (JURY INSTRUCTIONS):**

Counsel for the government is hereby directed to draft proposed instructions which identify the elements of the offense in the form of 6th Circuit pattern instruction 2.02, and to draft any other "non-standard" instruction requests. Counsel for the defense shall also draft any "non-standard" instructions intended to be requested. Other instructions may be requested of the court by either party simply by reference to pattern instruction number.

"Elements" instructions by the government, and proposed special instructions by both counsel shall be circulated among counsel with a reasonable opportunity given for reaction and possible stipulation. All such drafting and reaction shall be concluded in time for submission of stipulated and requested instructions **before the jury selection** is scheduled to commence. The court intends to produce in chambers the entire final set of instructions.

Counsel must **submit proposed instructions both on paper and on a 3.5" computer diskette** (preferably written with WordPerfect).

5) **Section 11 (MOTION TIME LIMITS):**

The court's practice is to set appropriate motion cut-off dates at the preliminary scheduling conference. The stringency of those limits generally varies with the complexity of the case and the completeness of voluntary government discovery. Counsel are reminded to seek concurrence under Local Rule 7.1(b) before filing any motion. Failure to do so will ordinarily result in a summary denial of the motion.

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

**APPENDIX 2**

**FINAL PRETRIAL; VOIR DIRE; JURY SELECTION  
AND TRIAL PRACTICES; SENTENCING**

**1) FINAL PRETRIAL AND GUILTY PLEA CUTOFF**

The court intends to accept no negotiated plea of guilty<sup>\*</sup> after the final pretrial and negotiated guilty plea cutoff conference date. Accordingly, unless a signed Rule 11 agreement is in hand before that time, the attorneys for the parties are hereby directed as follows:

a) Attorneys and defendant(s) shall personally appear in court at the noticed date and time, prepared to enter any guilty plea that may be forthcoming. In the alternative, counsel may advise the court that the case is to be concluded by trial. In this event counsel must be fully prepared to conduct the Final Pretrial Conference, and to discuss the following areas:

- i) Evidence stipulations or problems
- ii) Instruction stipulations or problems
- iii) Unresolved motions

**2) VOIR DIRE:**

It is the court's practice to conduct *voir dire* questioning of the jury panel. Counsel must submit any questions they may wish to request in writing to the court by the end of the business day **two days before jury selection** is scheduled to commence. Question requests submitted on the morning of trial will not be considered by the court.

**3) JURY SELECTION METHOD: JURY TRIAL PRACTICES**

a) The court will use the "Strike" or "Struck Jury" system for jury selection. If counsel require a detailed written description of this method, contact chambers and so request. Ordinarily the court will select twelve regular and two

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<sup>\*</sup> A "negotiated" plea is meant by the Court to include one which contains restrictions regarding sentencing under Rule 11, a significant reduction in the number of counts alleged, or other substantial concessions by the government which might impinge upon the Court's sentencing authority or discretion. The court does not favor plea agreements under Rule 11(c)(1)(C), but readily accepts plea agreements under Rule 11(c)(1)(B) that include non-binding sentencing recommendations; the court also generally accepts plea agreements that contemplate well-founded 5K1.1 departures. Although 11(c)(1)(B) recommendations are not binding, the court nonetheless gives great weight to the government's assessment.

alternate jurors. Initial peremptory challenges must be used to select the twelve, and the additional peremptory used separately to select the alternates. In this event, alternate jurors will be told at the beginning of the case that they are indeed alternates.

b) At trial, the court generally gives to the jury a copy of the indictment as a guide to the case the government is required to prove. Therefore, counsel for the government ordinarily produces a "sanitized" version of the indictment redacted of all language referring to the Grand Jury and any other irrelevant or potentially prejudicial matter.

c) The jury will be allowed to take notes. Also in the event that all counsel agree, the jury will be allowed to submit written proposed clarification questions of witnesses at the conclusion of the testimony. Any such questions will be reviewed by the court and the attorneys out of the hearing of the jury. The court would then ask the question on behalf of the juror, and an opportunity for follow-up questions will be provided to counsel after the answer is received. Attorneys exposed to this procedure, in the court's experience, have been favorably impressed with it and have found it helpful to have such a "window" into the thinking of the jury during trial. Caution must be exercised, however. The court will specifically instruct the jury in advance on these issues.

#### 4) **SENTENCING PROCEDURES**

[An Order Defining Counsel's Presentence Report Responsibilities will be issued, upon conviction of a defendant, which will restate the following points.]

a) In the event of a conviction by plea or trial, a presentence report will be prepared in the regular course of business and counsel will respond pursuant to Rule 32, Fed. R. Crim. P., and any applicable Local Rule of this court, noting particularly the following additions:

b) Attorneys shall avoid objecting to presentence report notations which are mere mechanical calculations under the guidelines the resolution of which depend on other factual items.

c) In the event that a party identifies objections (controverted items) which are not accepted by the probation officer, and which are therefore to be resolved by the court, both parties shall prepare to respond in writing. Although a more detailed order for response may be forthcoming from chambers on a case-by-case basis, the non-objecting party shall respond to each objection, setting forth the party's position in agreement or disagreement with the objection, and specifying at least these things:

i) The factual or legal basis on which the response rests.

ii) Whether or not the party intends to present witnesses in support of a sentencing position.

iii) If witnesses are intended, the name of each witness should be given along with a brief statement showing the controverted item to which the witness's testimony applies, the substance of the witness's intended testimony (expressed in one or two sentences), and an estimate of the time

required to present the witness's testimony.

d) Any motion for departure must be in writing and filed not less than seven days before sentencing. The opposing party is expected to respond before the sentencing date. Counsel are asked to provide a copy of the motion to the Probation Officer.